

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID PARKER SMITHEY
(CRD No. 4137601),

Respondent.

Disciplinary Proceeding
No. E0220040502-01

Hearing Officer

COMPLAINT

The Department of Enforcement alleges as follows:

SUMMARY AND NATURE OF THE ACTION

1. Between February 2001 and October 2002, David Parker Smithey ("Smithey"), while serving on the Board of Directors of NASD member firm Tradeportal Securities, Inc. ("TSI"), participated in a fraud involving an investment fund entitled World Ventures Trust ("WVT"). Smithey made a series of representations about WVT's purported performance and profitability that induced C.C. to invest more than \$500,000. As late as July 2003, Smithey told C.C. that his WVT investment was worth about approximately \$1.2 million. Smithey's representations were false. In fact, WVT's entire value in July 2003 was less than \$1,500. C.C. was never able to withdraw any funds and ultimately lost his entire investment. Smithey has refused to respond to the staff's inquiries about WVT.

2. Smithey's conduct violated Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5], NASD Conduct Rules 3040, 2120, 2110 and NASD Procedural Rule 8210.

3. By this Complaint, the Department of Enforcement seeks findings of facts and conclusions of law that Smithey committed the charged violations and an order (i) imposing sanctions and costs in accordance with NASD Procedural Rule 8310 and (ii) requiring Smithey to disgorge his ill-gotten gains and to make full and complete restitution.

RESPONDENT AND JURISDICTION

4. Smithey is the Founder, Chairman and Chief Executive Officer of Tradeportal.com, Inc. ("Tradeportal"), a financial services technology company that produces trading software. Tradeportal wholly owns TSI.

5. Smithey became a member of TSI's Board of Directors on or about October 5, 2000. Smithey also became TSI's Chief Technology Officer in August 2002 and its Treasurer in January 2003. He resigned from all three positions and ceased his association with TSI on or about December 31, 2004. In the course of his association with TSI, on or about February 9, 2000 and March 20, 2003, Smithey applied for but failed to complete the registration process with NASD.

6. Pursuant to Article I, Section (dd) of NASD's By-Laws, by virtue of his membership on TSI's Board of Directors, Smithey was associated with member firm TSI from October 5, 2000 through December 31, 2004. Pursuant to Article V, Section 4 of NASD's By-Laws, Smithey is subject to NASD's jurisdiction for purposes of this Complaint.

SUBSTANTIVE ALLEGATIONS

7. In February 2001, Smithey contacted C.C. and invited him to invest in the WVT fund. C.C. was not a TSI customer but had been an acquaintance of Smithey's for several years. Smithey represented to C.C. that he was the fund "trader" and, as a result of his expertise, the fund had experienced more than 500% appreciation since its inception. Smithey further represented that invested funds could be withdrawn at any time, subject to a 2-3 day waiting period.

8. Based on Smithey's representations, between March 7, 2001 and April 12, 2001, C.C. gave Smithey personal checks totaling \$285,000, payable to WVT, for investment in the fund.

9. On June 11, 2001, Smithey e-mailed C.C. a purported WVT fund performance report. The report asserted that, as of June 1, 2001, C.C.'s \$285,000 investment had appreciated to nearly \$400,000 and constituted 8.46% of the fund's purported \$4.7 million valuation. On June 12, 2001, C.C. invested an additional \$25,000 in WVT.

10. Smithey's performance report was fabricated. The true value of the *entire* WVT fund as of June 1, 2001 was approximately \$105,000.

11. From August 2001 through July 2002, Smithey e-mailed at least ten fund performance reports to C.C., intending to induce C.C. to make additional investments in WVT. In those reports, Smithey represented that WVT's valuation had grown from approximately \$4.8 million in July 2001 to \$8.1 million in June 2002. Based upon those reports, C.C. made additional investments in WVT totaling \$275,000 from December 2001 to October 2002. These investments are more fully set forth on Schedule A, attached hereto and made a part hereof.

12. The fund performance reports lacked any factual basis. By June 2002, WVT was worth approximately \$1,800.

13. In July 2003, Smithey sent a fund performance report to C.C. claiming that WVT was worth approximately \$11.1 million as of June 30, 2003. The report claimed that the value of C.C.'s investment in the fund had risen to approximately \$1.2 million. In actuality, as of June 30, 2003, WVT's entire value was approximately \$1,500.

14. In August 2003, C.C. attempted to withdraw approximately \$500,000. Smithey falsely claimed that C.C.'s funds were temporarily inaccessible due to an action by the U.S. government. In October 2003, C.C. requested that his entire investment be withdrawn from WVT.

15. C.C. has lost his entire investment. To this day, he has been unable to gain access to and recoup any of the money that he invested in WVT.

FIRST CAUSE OF COMPLAINT

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and NASD Conduct Rules 2120 and 2110 (Manipulative and Deceptive Devices)

16. The Department of Enforcement re-alleges and incorporates paragraphs 1 through 15 by reference.

17. Smithey, by engaging in the conduct set forth above, directly or indirectly, in connection with the purchase or sale of securities, by use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national security exchange, with *scienter*: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon other persons.

18. By reason of the foregoing, Smithey violated section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and NASD Conduct Rules 2120 and 2110.

SECOND CAUSE OF COMPLAINT

Violations of NASD Conduct Rules 3040 and 2110 (Private Securities Transactions)

19. The Department of Enforcement re-alleges and incorporates paragraphs 1 through 15 by reference.

20. Smithey failed to provide member firm TSI with prior written notice of his activities involving WVT and C.C., as required by NASD Conduct Rule 3040. Moreover, member firm TSI never provided Smithey with approvals, written or otherwise, to participate in any of the WVT transactions, described more fully above.

21. By reason of the foregoing, Smithey violated NASD Conduct Rules 3040 and 2110.

THIRD CAUSE OF COMPLAINT

Violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 (Failure to Respond to Requests for Information)

22. The Department of Enforcement re-alleges and incorporates paragraphs 1 through 15 by reference.

23. NASD initiated an investigation of the facts and circumstances relating to a written complaint C.C. filed with NASD on or about July 15, 2004, against Smithey. In the complaint, C.C. asserted that, among other things, Smithey misappropriated C.C.'s funds.

24. Pursuant to Procedural Rule 8210, on October 4, 2004, a NASD staff examiner ("examiner") sent a letter (the "First 8210 Letter"), via certified and regular mail, to Smithey at his address as set forth in the NASD Central Registration Depository ("CRD Address"). A copy of the letter was also sent to Smithey's address of employment ("TSI Address"). An additional copy was sent to Smithey's attorney via facsimile. The First 8210 Letter requested specific information and documentation regarding the foregoing investigation. The examiner requested that Smithey provide his written response to the First 8210 Letter by October 18, 2004.

25. NASD staff received no response to the First 8210 Letter.

26. Pursuant to Procedural Rule 8210, on October 19, 2004, the examiner sent a second letter (the "Second 8210 Letter"), via certified and regular mail, to the CRD Address and to the TSI Address. The letter was again faxed to Smithey's attorney. The Second 8210 Letter

reiterated the requests made in the First 8210 Letter. The examiner requested that Smithey provide his written response to the Second 8210 Letter by November 3, 2004.

27. On October 19, 2004, the examiner received a telephone call from Smithey's attorney, stating that she had received the Second 8210 Letter. She stated that Smithey would not provide the information or documentation requested in the First and Second 8210 Letters.

28. NASD staff has received no other response to the Second 8210 Letter.

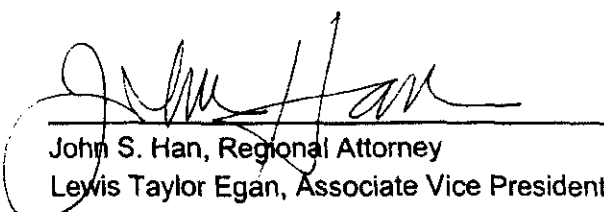
29. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Smithey.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Smithey committed the violations alleged within this Complaint;
- B. An order imposing sanctions upon Smithey in accordance with NASD Rule 8310;
- C. An order requiring Smithey to disgorge any ill-gotten gains and make full and complete restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

Date: March 8, 2006


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SCHEDULE A
Department of Enforcement v. David Parker Smithey,
Disciplinary Proceeding No. E0220040502-01

Respondent Smithey's Fraudulent Performance Reports and C.C.'s Investments

Date of Fraudulent Performance Report	Date of C.C.'s Investment	Amount of C.C.'s Investment
	03/07/2001	\$260,000
	04/12/2001	\$18,000
	04/12/2001	\$7,000
06/11/2001		
	06/12/2001	\$25,000
07/09/2001		
08/30/2001		
09/12/2001		
12/03/2001		
	12/04/2001	\$50,000
12/05/2001		
01/10/2002		
03/04/2002		
03/07/2002		
	04/01/2002	\$65,000
05/07/2002		
07/05/2002		
	10/26/2002	\$100,000
07/10/2003		
		Total: \$525,000